In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 615

TEXTILE WORKERS UNION OF AMERICA, AFL-CIO,
PETITIONER

v.

THE SCHWARZENBACH-HUBER COMPANY

and

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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1. The Board found that the Company had violated Section 8(a)(1) of the National Labor Relations Act by disciplining an employee for organizing on behalf of petitioner Union, by coercively interrogating employees concerning the Union, and by threatening to close or move the plant and abolish

jobs if the Union were to win a scheduled Board election (Pet. App. 89a-91a). In addition, the Board found that the Company had violated Section 8(a)(2) and (1) of the Act by dominating and assisting a competing labor organization, the Employee Committee (Pet. App. 94a-95a). Finally, the Board found that the Union had obtained valid authorization cards from 103 employees in a total unit of 197 or 199 when the Company, on February 14, 1967, refused the Union's request for recognition (Pet. App. 97a);[1] that the above unfair labor practices indicated that the Company's refusal was not motivated by a good faith doubt as to the Union's majority, but by a desire to gain time in which to dissipate that majority; and that the Company thus refused to bargain, in violation of Section 8(a)(5) of the Act (Pet. App. 118a). The Board ordered the Company, *inter alia*, to bargain with the Union upon request (Pet. App. 122a).

2. The court of appeals declined to sustain the Board's 8(a)(5) finding and to enforce its bargaining order. It held, first, that the Union did not have cards from a majority of the employees on February 9, 1967, when it first requested recognition, and that this date was crucial in determining the lawfulness of the Company's refusal to bargain (Pet. App. 6a-

[1] When the Union first demanded recognition, on February 9, 1967, the Board found that it had signed authorization cards from 99 unit employees. It was unnecessary to determine, however, whether the Union had a majority on that date, since the Board construed the Union's demand as continuing, and, therefore, still in effect on February 14, when 103 cards, a clear majority, had been obtained (Pet. App. 96a-97a).

8a).[2] Second, it found that many of the cards the Union obtained after February 9 were procured through misrepresentations that they would be used only to obtain a Board election (Pet. App. 9a-20a); that the Company in fact had a good faith doubt as to the Union's majority status (Pet. App. 20a-25a); and that a bargaining order based on authorization cards was "an abomination * * * that serves no other purpose than to afford a method by which elections can be by-passed and the Unions ushered in without giving the employees * * * any voice in the matter" (Pet. App. 25a-26a).

The Court sustained the Board's findings that the Company reprimanded an employee in violation of Section 8(a)(1) of the Act, and that it unlawfully dominated and assisted the Employee Committee (Pet. App. 40a-41a). However, it held that the Board's further findings of violations of Section 8(a)(1), including those relating to alleged threats by the Company president to close the plant, were not supported by substantial evidence (Pet. App. 27a-40a).

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[2] This conclusion rested on these subsidiary findings: (1) the appropriate unit consisted of 199 employees (Pet. App. 5a-6a); (2) cards obtained after February 9 could not be counted since the Union had distributed copies of its February 9 letter claiming majority status to the employees, and the "effect of this widespread diffusion of the Union's false claim * * * was undoubtedly to bring the reluctant sheep into the fold by telling them the fight was over, the Union had won and they might as well get on the bandwagon" (Pet. App. 7a); (3) the Union had obtained only 98 cards as of February 9 (Pet. App. 8a).

3. Petitioner contends that, in declining to enforce the Board's bargaining order in this case, the court of appeals applied principles subsequently rejected by this Court in *National Labor Relations Board* v. *Gissel Packing Co.*, 395 U.S. 575. The Board agrees that the views expressed by the court of appeals on the nature of authorization cards (Pet. App. 25a-26a), on the question of misrepresentation, and on the character of the speeches by the Company president (Pet. App. 17a-20a, 30a-38a) are contrary to this Court's decision in *Gissel*. See 395 U.S. at 601-609, 616-620. It believes, however, that the action of the court of appeals rests independently on a ground which involves no conflict with *Gissel*—*i.e.*, the court's finding that the Union lacked a majority on February 9, 1967, when it first requested recognition, and that in the circumstances of this case subsequent cards could not be counted towards majority status. While the Board also disagrees with this finding, it recognizes that this issue is essentially evidentiary, and hence not appropriate for review in this Court.

For this reason, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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